

Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

Chapter 337-A: PROTECTION FROM HARASSMENT

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Maine Revised Statutes
Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES
Chapter 337-A: PROTECTION FROM HARASSMENT

§4651. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 515, §1 (NEW).]

1. Court. "Court" means any District Court and, with regard to section 4659, the tribal court of the Passamaquoddy Tribe or the Penobscot Nation.

[1993, c. 469, §1 (AMD) .]

2. Harassment. "Harassment" means:

A. Three or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property; or [2011, c. 559, Pt. C, §1 (AMD).]

B. [2011, c. 559, Pt. C, §2 (RP).]

C. A single act or course of conduct constituting a violation of section 4681; Title 17, section 2931; or Title 17-A, sections 201, 202, 203, 204, 207, 208, 209, 210, 210-A, 211, 253, 301, 302, 303, 506-A, 511, 556, 802, 805 or 806. [2001, c. 134, §1 (AMD).]

This definition does not include any act protected by law.

[2011, c. 559, Pt. C, §§1, 2 (AMD) .]

3. Law enforcement agency. "Law enforcement agency" means the State Police, a sheriff's department or a municipal police department.

[1987, c. 515, §1 (NEW) .]

4. Business. "Business" means any corporation, partnership, limited liability corporation, professional corporation or any other legal business entity recognized under the laws of the State.

[1995, c. 265, §2 (NEW) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 695, §1 (AMD). 1991, c. 760, §1 (AMD). 1993, c. 199, §1 (AMD). 1993, c. 469, §1 (AMD). 1995, c. 265, §§1, 2 (AMD). 1995, c. 650, §1 (AMD). 2001, c. 134, §1 (AMD). 2011, c. 559, Pt. C, §§1, 2 (AMD).

§4652. FILING OF COMPLAINT; JURISDICTION

Proceedings under this chapter must be filed, heard and determined in the District Court of the division in which either the plaintiff or the defendant resides. If the plaintiff has left the plaintiff's residence to avoid harassment, the plaintiff may bring an action in the division of the plaintiff's previous residence or new residence. [1991, c. 760, §2 (AMD).]

The District Court has jurisdiction over protection from harassment complaints. If a District Court judge is not available in the division in which a complaint requesting a temporary order is to be filed, the complaint may be presented to any other District Court judge or to any Superior Court justice who has the same authority as a District Court judge to grant or deny the temporary order. [2003, c. 658, §1 (AMD) .]

A juvenile may be a party to an action under this chapter only when the juvenile has a representative through whom the action is brought or defended pursuant to the Maine Rules of Civil Procedure, Rule 17(b). The Department of Health and Human Services may act as a representative of the juvenile. If any notice or service is required by this chapter, the notice or service must be provided to both the juvenile and the juvenile's representative. [1995, c. 650, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 708, §2 (AMD). 1991, c. 760, §2 (AMD). 1995, c. 650, §2 (AMD). 2003, c. 658, §1 (AMD). 2003, c. 689, §B6 (REV) .

§4653. COMMENCEMENT OF PROCEEDINGS

1. Filing. A person who has been a victim of harassment, including a business, may seek relief by filing in an appropriate court:

A. A sworn complaint alleging harassment; and [2011, c. 559, Pt. C, §3 (NEW) .]

B. If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C or is not related to an allegation of domestic violence, violence against a dating partner, sexual assault or stalking, a copy of a notice to stop harassing the plaintiff issued to the defendant pursuant to Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or a statement of good cause why such a notice was not sought or obtained. [2011, c. 559, Pt. C, §3 (NEW) .]

[2011, c. 559, Pt. C, §3 (AMD) .]

2. Assistance. The court shall provide separate forms with a summons and clerical assistance to assist either party to proceed under this chapter in completing and filing a complaint or other necessary documents. This assistance may not include legal advice or assistance in drafting legal documents.

[2003, c. 658, §3 (AMD) .]

3. Fees. No fee may be charged for forms. A plaintiff may apply for the right to proceed in forma pauperis.

[1989, c. 371, §1 (AMD) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 708, §3 (AMD). 1989, c. 371, §1 (AMD). 1993, c. 199, §2 (AMD). 1995, c. 265, §3 (AMD). 1995, c. 650, §3 (AMD). RR 2003, c. 2, §7 (COR). 2003, c. 658, §§2,3 (AMD). 2011, c. 559, Pt. C, §3 (AMD) .

§4654. HEARINGS

1. Full hearing. A hearing must be held at which the plaintiff shall prove the allegation of harassment by a preponderance of the evidence.

[2003, c. 2, §8 (COR) .]

2. Temporary orders. The court may enter any temporary orders, authorized under subsection 4, without written or oral notice to the defendant or the defendant's attorney if:

A. It appears clearly from a verified complaint or an affidavit accompanying the complaint that:

(1) Before the defendant or the defendant's attorney can be heard, the plaintiff or the plaintiff's employees may be in immediate and present danger of physical abuse from the defendant or in immediate and present danger of suffering extreme emotional distress as a result of the defendant's conduct, or the plaintiff's business property is in immediate and present danger of suffering substantial damage as a result of the defendant's actions;

(2-A) If the alleged harassment does not meet the definition in section 4651, subsection 2, paragraph C or is not related to an allegation of domestic violence, violence against a dating partner, sexual assault or stalking, the plaintiff has obtained a copy of a notification issued against the other person as described in Title 17-A, section 506-A, subsection 1, paragraph A, subparagraph (1), division (a) or the plaintiff has filed a statement of good cause why such relief was not sought or why such a notice was not issued; and

(3) The plaintiff has provided sufficient information to substantiate the alleged harassment; and [2011, c. 559, Pt. C, §4 (AMD).]

B. [2011, c. 559, Pt. C, §5 (RP).]

C. The court provides written reasons for entering a temporary order. [1987, c. 515, §1 (NEW).]

[2011, c. 559, Pt. C, §§4, 5 (AMD) .]

3. Emergency relief. Emergency relief is available as follows.

A. When there is no judge available in the District Court having venue or the District Court courthouse is closed and no other provision can be made for protection of a victim of harassment, a complaint may be presented to any judge of the District Court or Justice of the Superior Court. Upon a meeting of the requirements of subsection 2, the court may enter any temporary orders, authorized under subsection 4, as the court considers necessary to protect the plaintiff from harassment. [2003, c. 658, §6 (AMD) .]

B. If a complaint is presented under this subsection, the complaint and any order issued pursuant to the complaint must be immediately certified to the clerk of the District Court having venue for filing. This certification to the court has the effect of commencing proceedings and invoking the other provisions of this chapter. [2003, c. 658, §6 (AMD) .]

C. An order remains in effect pending a hearing pursuant to subsection 1. [2003, c. 658, §6 (AMD) .]

[2003, c. 658, §6 (AMD) .]

4. Interim relief. The court, in an ex parte proceeding, may enjoin the defendant from engaging in any of the following:

A. Imposing any restraint upon the person or liberty of the plaintiff or the plaintiff's employees; [1995, c. 265, §5 (AMD) .]

B. Threatening, assaulting, molesting, harassing or otherwise disturbing the peace of the plaintiff or the plaintiff's employees; [1995, c. 265, §5 (AMD) .]

C. Entering the plaintiff's residence or property, provided that the court may not use this subsection to evict a defendant from the rental premises in an action brought by a plaintiff; [1995, c. 265, §6 (AMD) .]

D. Taking, converting or damaging property in which the plaintiff may have a legal interest; [1993 , c. 680, Pt. A, §11 (AMD).]

E. [1995, c. 650, §5 (RP).]

F. Repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; or [1995, c. 650, §6 (AMD).]

G. Having any direct or indirect contact with the plaintiff. [1995, c. 650, §7 (NEW).]

If the court enjoins the defendant under this subsection, and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

[1995, c. 650, §§5-7 (AMD) .]

5. Service of order. If the court issues a temporary order or orders emergency or interim relief, the court shall order a law enforcement agency or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15 or, if the defendant is in the custody of the Department of Corrections, the Department of Corrections to serve the defendant personally with the order, the complaint and the summons. The court shall cause the order to be delivered to the law enforcement agency, the court security officer or the correctional facility in which the defendant is incarcerated as soon as practicable following the issuance of the order, and the law enforcement agency, court security officer or chief administrative officer of the correctional facility or the chief administrative officer's designee shall make a good faith effort to serve process expeditiously.

[2009, c. 94, §1 (AMD) .]

6. Dissolution or modification. Notwithstanding any statutory provision to the contrary, on 2 days' notice to the plaintiff or on such shorter notice as the court may order, a person who is subject to any order may appear and move the dissolution or modification of the order and in that event the court shall proceed to hear and determine the motion. The hearing on the motion may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. At that hearing, the plaintiff has the burden of justifying any finding in the ex parte order that the defendant has challenged by affidavit. Nothing in this section may be construed to abolish or limit any means, otherwise available by law, for obtaining dissolution, modification or discharge of an order.

[2011, c. 559, Pt. C, §6 (AMD) .]

7. Extension. If a hearing under subsection 1 is continued, the court may make or extend such temporary orders as it deems necessary.

[1987, c. 515, §1 (NEW) .]

8. Service of order; use of electronic copies. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service.

In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order.

[2009, c. 555, §1 (NEW) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 708, §4 (AMD). 1989, c. 164, (AMD). 1991, c. 760, §3 (AMD). 1993, c. 199, §§3-5 (AMD). 1993, c. 475, §1 (AMD). 1993, c. 680, §§A10-13 (AMD). 1995, c. 265, §§4-6 (AMD). 1995, c. 650, §§4-7 (AMD). 1999, c. 542, §1 (AMD). 2001, c. 134, §2 (AMD). RR 2003, c. 2, §8 (COR). 2003, c. 658, §§4-7 (AMD). 2009, c. 94, §1 (AMD). 2009, c. 555, §1 (AMD). 2011, c. 559, Pt. C, §§4-6 (AMD).

§4655. RELIEF

1. Protection order; consent agreement. The court, after a hearing and upon finding that the defendant has committed the harassment alleged, may grant any protection order or approve any consent agreement to bring about a cessation of harassment, which may include:

A. Directing the defendant to refrain from harassing, threatening, assaulting, molesting, attacking or otherwise abusing the plaintiff or the plaintiff's employees; [1995, c. 265, §7 (AMD).]

B. Directing the defendant to refrain from going on the premises of the plaintiff's residence or property, provided that the court may not use this subsection to evict a defendant from the rental premises in an action brought by a plaintiff; [1995, c. 265, §8 (AMD).]

C. Directing the defendant to refrain from interference with or destruction of the plaintiff's property; [1993, c. 199, §6 (AMD).]

C-1. Directing the defendant to refrain from repeatedly and without reasonable cause:

(1) Following the plaintiff; or

(2) Being at or in the vicinity of the plaintiff's home, school, business or place of employment; [1993, c. 475, §2 (NEW).]

C-2. Directing the defendant to refrain from having any direct or indirect contact with the plaintiff; [2001, c. 134, §3 (NEW).]

D. Ordering payment of monetary compensation to the plaintiff for losses suffered as a direct result of the harassment. Compensatory losses are limited to loss of earnings or support; reasonable expenses incurred for safety protection; reasonable expenses incurred for personal injuries or property damage; and reasonable moving expenses. Upon the motion of either party, for sufficient cause, the court may set a later hearing on the issue of the amount of damages, if any, to be awarded. If it appears from the complaint that an order under this paragraph may be granted, the plaintiff or defendant may remove the issue of monetary compensation to the Superior Court where a jury trial may be had. Removal must be requested by motion prior to a hearing under section 4654; [2003, c. 658, §8 (AMD).]

E. Ordering the defendant to pay court costs or reasonable attorney's fees; and [1993, c. 475, §2 (AMD).]

F. Entering any other orders determined necessary or appropriate in the discretion of the court. [1993, c. 475, §2 (AMD).]

If the court enjoins the defendant under this subsection, and the enjoined conduct constitutes harassment under Title 17-A, section 506-A, the court shall include in the order a warning in conformity with Title 17-A, section 506-A.

[2003, c. 658, §8 (AMD) .]

1-A. Judgment against plaintiff. If a judgment is entered against the plaintiff and the court finds that the complaint is frivolous, the court may order the plaintiff to pay court costs, reasonable attorney's fees or both.

[2009, c. 263, §1 (NEW) .]

2. Duration. Any protective order or approved consent agreement shall be for a fixed period not to exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff from harassment. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require.

[1987, c. 515, §1 (NEW) .]

3. Consequences of violation. Any protective order or approved consent agreement shall indicate, in a clear and conspicuous manner, the potential consequences of violation of the order or agreement.

[1987, c. 515, §1 (NEW) .]

4. Title to property. No order or agreement may affect title to any real property.

[1987, c. 515, §1 (NEW) .]

5. Bond prohibited. The court shall not require the execution of a bond by the plaintiff prior to issuance of any order of protection.

[1987, c. 515, §1 (NEW) .]

6. Service of order or consent decree. The court shall order a law enforcement agency; or, if the defendant is present in the courthouse, a court security officer qualified pursuant to Title 4, section 17, subsection 15; or, if the defendant is in the custody of the Department of Corrections, the chief administrative officer or the chief administrative officer's designee at the correctional facility, to serve the defendant personally with a protective order or consent decree.

A. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service. [2009, c. 555, §2 (NEW) .]

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order. [2009, c. 555, §3 (NEW) .]

[2009, c. 555, §§2, 3 (AMD) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 708, §5 (AMD). 1993, c. 199, §6 (AMD). 1993, c. 475, §2 (AMD). 1995, c. 265, §§7-9 (AMD). 1999, c. 542, §2 (AMD). 2001, c. 134, §3 (AMD). 2003, c. 658, §8 (AMD). 2009, c. 94, §2 (AMD). 2009, c. 263, §1 (AMD). 2009, c. 555, §§2, 3 (AMD).

§4656. IDENTIFYING INFORMATION SEALED

If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed by the clerk and not disclosed to the other party or to the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice. [2001, c. 134, §4 (RPR).]

SECTION HISTORY

1987, c. 515, §1 (NEW). 2001, c. 134, §4 (RPR).

§4657. NOTIFICATION

The clerk shall issue, without fee, a copy of an order, agreement, amendment or revocation to the plaintiff, the defendant and, as the court directs, to the law enforcement agencies most likely to enforce it. [1987, c. 515, §1 (NEW).]

SECTION HISTORY

1987, c. 515, §1 (NEW).

§4658. PROCEDURE

1. Civil rules apply. Unless otherwise indicated in this chapter, all proceedings shall be in accordance with the Maine Rules of Civil Procedure. Appeals may be taken as provided by the Maine Rules of Civil Procedure and may be only for error of law or abuse of discretion.

[1987, c. 515, §1 (NEW) .]

2. Proceedings independent. A proceeding under this chapter shall be in addition to any other available civil or criminal remedies.

[1987, c. 515, §1 (NEW) .]

3. Self-defense. The right to relief, under this chapter, shall not be affected by the plaintiff's use of reasonable force in response to harassment by the defendant.

[1987, c. 708, §6 (AMD) .]

4. Intoxication. Voluntary intoxication shall not be a defense to an action under this chapter.

[1987, c. 515, §1 (NEW) .]

5. Referee. The court may not mandate appointment of referees in actions brought under this chapter. If an action under this chapter is joined with another proceeding, this subsection does not prohibit the court from mandating appointment of a referee on any issue, other than harassment, that is part of the other proceeding.

[2001, c. 243, §1 (NEW) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 708, §6 (AMD). 2001, c. 243, §1 (AMD).

§4659. VIOLATION

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation or a court-approved consent agreement, when the defendant has prior actual notice of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 4655, subsection 1, paragraphs D to F. Violation of these paragraphs must be treated as contempt and punished in accordance with law.

[1993, c. 469, §2 (AMD) .]

2. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation as defined in this section of an order or consent agreement may be made without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of a protective order by telephone or radio communication with a law enforcement agency with knowledge of the order.

[1993, c. 469, §2 (AMD) .]

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 695, §2 (AMD). 1993, c. 469, §2 (AMD).

§4660. LAW ENFORCEMENT AGENCY RESPONSIBILITIES

(REPEALED)

SECTION HISTORY

1987, c. 515, §1 (NEW). 1987, c. 695, §3 (RP).

§4660-A. LAW ENFORCEMENT AGENCY RESPONSIBILITIES

1. Reports. Each law enforcement agency shall report all incidents of harassment as required by the State Bureau of Identification under Title 25, section 1544.

[1987, c. 695, §4 (NEW) .]

2. Agency procedures. Law enforcement agencies shall establish procedures to ensure that dispatchers and officers at the scene of an alleged incident of harassment or violation of an order of protection can be informed of any recorded prior incident of harassment involving the harassed party and can verify the effective dates and terms of any recorded protection order.

[1987, c. 695, §4 (NEW) .]

3. Officer training. Law enforcement agencies shall provide officers employed by them with an education and training program designed to inform the officers of the problems of harassment, procedures to deal with these problems and the provisions of this chapter. The amount and degree of officer training, beyond the distribution of information, shall be determined by each local law enforcement agency.

[1987, c. 695, §4 (NEW) .]

4. Officer responsibilities. Whenever a law enforcement officer has reason to believe that a person has been a victim of harassment, the officer shall immediately use all reasonable means to prevent further harassment, including:

A. Remaining on the scene as long as he reasonably believes there is a danger to the physical safety of that person without the presence of a law enforcement officer; [1987, c. 695, §4 (NEW) .]

B. Assisting that person in obtaining medical treatment necessitated by an assault; [1987, c. 695, §4 (NEW).]

C. Giving that person written notice of his rights, which shall include information summarizing the procedures and relief available to victims of harassment; or [1987, c. 695, §4 (NEW).]

D. Arresting the harassing party with or without a warrant pursuant to section 4659, subsection 2. [1987, c. 695, §4 (NEW).]

[1987, c. 695, §4 (NEW) .]

SECTION HISTORY

1987, c. 695, §4 (NEW).

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